



COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: By this Order, the Commodity Futures Trading Commission (Commission) is amending and consolidating prior relief issued in orders pursuant to Commission regulation 30.10 regarding the offer and sale of foreign futures and options contracts to customers located in the U.S. by firms designated by the Montreal Exchange (MX) to reflect changes to the local laws and regulations applicable to the segregation of customer funds.

DATES: This Order is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Andrew V. Chapin, Associate Chief Counsel, (202) 418-5465, achapin@cftc.gov, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Amending and Consolidating the Terms and Conditions Set Forth in Prior Orders Issued Pursuant to Commission Regulation 30.10 Exempting Firms Designated by the Montreal Exchange From the Application of Certain of the Foreign Futures and Option Regulations

Part 30 of the Commission's regulations governs the offer and sale of futures and option contracts traded on or subject to the regulations of a foreign board of trade

(foreign futures and options) to customers located in the U.S.¹ These regulations set forth requirements for foreign firms acting in the capacity of a futures commission merchant (FCM), introducing broker, commodity pool operator and commodity trading adviser with respect to the offer and sale of foreign futures and options to U.S. customers and are designed to ensure that such products offered and sold in the U.S. are subject to regulatory safeguards comparable to those applicable to transactions entered into on designated contract markets. Pursuant to § 30.10(a), persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they are located may seek an exemption from certain of the requirements under Part 30 of the Commission's regulations based upon compliance with the regulatory requirements of the person's jurisdiction.² If the Commission determines that relief pursuant to § 30.10(a) is not otherwise contrary to the public interest or to the purposes of the provisions from which exemption is sought, the Commission issues an Order to the petitioner – typically a foreign regulator or self-regulatory organization (SRO) - that sets forth conditions governing such relief. Persons subject to regulatory oversight by the foreign regulator or SRO granted an exemption, as appropriate, and located and doing business outside the U.S. may solicit or accept orders directly from U.S. customers for foreign futures or options transactions and, in the case of a person acting in the capacity of an FCM, accept customer money or other property, without registering under the Commodity Exchange Act (CEA or Act) in the appropriate capacity.³

In 1989, the Commission issued an order to MX pursuant to § 30.10(a) permitting designated members of MX to intermediate on behalf of customers located in the U.S. foreign futures and options transactions executed on MX without having to register as

¹ 17 CFR Part 30. The Commission promulgated part 30 of its regulations in 1987. *See* Foreign Futures and Foreign Options Transactions, 52 FR 28980 (Aug. 5, 1987). Appendix A also specifically states that in considering an exemption request, the Commission will take into account the extent to which United States persons or contracts regulated by the Commission are permitted to engage in futures-related activities or be offered in the country from which an exemption is sought. 17 CFR Part 30, Appendix A.

² 17 CFR 30.10(a).

³ The term “futures commission merchant” is defined in § 1.3, 17 CFR 1.3.

FCMs with the Commission.⁴ In 1997, the Commission issued another order expanding the exemptive relief for designated members to include foreign futures and options transactions on foreign boards of trade other than MX, as permitted by local law and regulation.⁵ At the time that these orders were published, the local laws and regulations applicable to MX members did not require the segregation of customer funds consistent with those requirements applicable to FCMs set forth in Section 4d(f) of the CEA and those regulations promulgated thereunder, including § 30.7.⁶ As a result, the Commission imposed a condition on each designated member of MX seeking confirmation of relief to comply with the secured amount requirement set forth in § 30.7. Specifically, among other representations, the 1989 Order stated that each MX member agrees to maintain, on behalf of customers located in the United States, funds equivalent to the “secured amount” described in Commission Rule 1.3(rr), 17 CFR 1.3(rr) (1988), in a separate account as set forth in Commission Rule 30.7, 17 CFR 30.7 (1988), and to treat those funds in the manner described by that rule.⁷

On July 15, 2019, MX petitioned the Commission on behalf of its member firms to amend the conditions for relief set forth in the 1989 and 1997 Orders. In particular, MX requested that the Commission remove the condition set forth in subparagraph (f) of the 1989 Order requiring MX members to comply with the secured amount requirement set forth in § 30.7. In support of its request, MX provided supplementary materials demonstrating that the relevant laws and regulations governing MX members require the segregation of customer funds consistent with § 30.7’s secured amount requirement applicable to registered FCMs.

Based upon a review of the petition and supplementary materials filed by MX, the Commission has concluded that MX has demonstrated to the Commission’s satisfaction

⁴ 54 FR 11179 (Mar. 17, 1989) (1989 Order).

⁵ 62 FR 8875 (Feb. 27, 1997) (1997 Order). The expanded § 30.10 relief provided under the 1997 Order was contingent on the continued compliance by MX and its designated members with the 1989 Order along with certain additional conditions. *See* 62 FR at 8876-7.

⁶ 7 U.S.C. 6d(f); 17 CFR 30.7.

⁷ 54 FR at 11182. In the time since the 1989 Order was issued, the Commission has amended § 30.7. *See, e.g.*, 78 FR 68648, (Nov. 14, 2013), as amended at 79 FR 44126, (July 30, 2014).

that the exemption for relief pursuant to § 30.10(a) is not otherwise contrary to the public interest or to the purposes of the provisions from which exemption is sought.

Accordingly, the Commission has determined that compliance with applicable Québec law and MX rules may be substituted for compliance with those sections of the Act and regulations regarding the separate account requirement set forth in § 30.7.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by MX as eligible for the relief granted herein from:

- Registration with the Commission for firms and for firm representatives;
- The requirement in Commission Regulation 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Regulation 1.55(b), 17 CFR 1.55(b), and Commission Regulation 33.7, 17 CFR 33.7, or as otherwise approved under Commission Regulation 1.55(c), 17 CFR 1.55(c);
- The separate account requirement contained in Commission Regulation 30.7, 17 CFR 30.7;
- Those sections of Part 1 of the Commission's regulations that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and
- Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30,

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in Québec, Canada.

This determination to permit substituted compliance is based on, among other things, the Commission's previous finding and the finding today that the regulatory framework governing persons in Québec who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for

granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement for a minimum level of working capital and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, required disclosures to prospective customers and prohibitions on improper trading advice;

(6) Procedures to audit for compliance with, and to redress violations of, the customer protection and sales practice requirements referred to above, including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, MX and the Québec regulatory authorities on an “as needed” basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in Québec, position data, and data on firms’ standing to do business and financial condition.

The relief set forth in this Order permits designated MX members to solicit and accept orders from U.S. customers for otherwise permitted transactions⁸ on all non-U.S.

⁸ See, e.g., Sections 2(a)(1)(C) and (D) of the Act.

exchanges where such members are authorized under local law and regulation to transact in futures and options. The relief does not extend to regulations relating to trading, directly or indirectly, on U.S. exchanges, and does not pertain to any transaction in swaps, as defined in Section 1a(47) of the Act. This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, such as the antifraud provision in § 30.9. For example, a MX member trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.⁹ Similarly, if such a firm were carrying positions on a U.S. exchange on behalf of foreign clients and submitted such transactions for clearing on an omnibus basis through a firm registered as an FCM under the Act, it would be subject to the reporting requirements applicable to foreign brokers.¹⁰ The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) MX, as the SRO responsible for monitoring the compliance of such firms with the regulatory requirements described in the § 30.10 petition, must represent in writing to the Commission that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Québec; such firm is engaged in business with customers located in Québec as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12a(2);

⁹ See, e.g., 17 CFR Part 18.

¹⁰ See, e.g., 17 CFR Parts 17 and 21.

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) It will carry out its compliance, surveillance, and rule enforcement activities with respect to any transactions on any non-MX exchange to the same extent it carries out such activities with respect to MX business;

(d) All transactions with respect to customers located in the U.S. will be made subject to the regulations of MX, and the Commission will receive prompt notice of all material changes to the relevant laws in Québec, any rules promulgated thereunder and MX rules;

(e) Customers located in the U.S. will be provided no less stringent regulatory protection than customers in Québec under all relevant provisions of Québec law;

(f) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 Regulations, including sharing the information specified in Appendix A on an “as needed” basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions and, where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (*e.g.*, banks and broker/dealer affiliates) along with a brief description of each subsidiary’s or affiliate’s identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in § 30.5;

(c) Agrees to provide access to its books and records related to transactions under Part 30, including those transactions undertaken on any non-U.S. exchange, required to be maintained under the applicable statutes and regulations in effect in Québec upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) Has no principal or employee who solicits or accepts orders from customers located in the U.S. who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.;

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, and consents to notify customers located in the U.S. of the availability of such a program;

(f) Undertakes to comply with the applicable provisions of Canadian laws and MX rules that form the basis upon which this exemption from certain provisions of the Act and regulations thereunder is granted; and

(g) Notwithstanding provisions of the Québec regulatory program, consents not to commingle the foreign futures and options funds or property of any customer located in the U.S. with funds of any account holders unrelated to trading foreign futures or foreign options; and refuse to any customer located in the U.S. the option of not segregating customer funds.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed

with NFA.¹¹ Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

This Order will become effective immediately as to any designated MX firm which currently operates under the 1989 and 1997 Orders, who will be deemed to have consented to the amended conditions by effecting transactions pursuant to this Order. With respect to any other designated MX firms, the relief will become effective the later of the date of publication of the Order in the *Federal Register* or the filing of the consents set forth in paragraphs (2)(a)-(g). Upon filing of the notice required under paragraph (1)(b) as to any such firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and MX.

This Order is issued pursuant to Regulation 30.10 based on the representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or to the purposes of the provision from which exemption is sought, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may, after appropriate notice and opportunity to respond, condition, modify, suspend, terminate, withhold as to a specific

¹¹ 62 FR 47792, 47793 (Sept. 11, 1997). Among other duties, the Commission authorized NFA to receive requests for confirmation of Regulation 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate § 30.10 Order and to grant exemptive relief from registration to qualifying firms.

firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate and as permitted by law, on its own motion. The process by which the Commission may terminate relief is set forth in § 30.10(c).¹²

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option regulations and will make necessary adjustments if appropriate.

Issued in Washington, DC, on November 2, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

**Appendix to Foreign Futures and Options Transactions – Commission Voting
Summary**

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

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¹² 17 CFR 30.10(c). *See* 85 FR 15359 (Mar. 18, 2020).